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This work[1] deals briefly with four interrelated topics: 1) highlights of the development of the Hungarian workers' compensation system, 2) main features of the Hungarian workers' compensation scheme in force, 3) key points of employers' liabilty and its relation to workers' compensation, 4) recent dilemmas, questions and possible solutions for Hungarian workers' compensation system.

1. Brief historical survey

The first appearance of compensating for occupational risks in Hungary was in the 13th century the private initiative of mineworkers and mine-owners called *"bányatársláda"* [mutual founds], which was operated by the self-government of mineworkers. The financial base (ground) of the mutual founds was constituted by the contributions paid by workers and employers. It provided in case of illness medical attendance, allowance and medicament support; in case of disablement pension or severance pay and in case of occupational death benefits for widows, orphans and funeral allowance. The institution of these mutual founds strengthened in the 15th-16th centuries and in 1778 – based on the decree by Joseph II – the establishment of mutual founds was ordered in every treasury-mine.[2]

In 1854 the Austrian Mining Act was extended to Hungary. It decreed the obligation of mine-owners (both public and private mine-owners) to establish mutual founds (társpénztár) for all mineworkers employed in their mines and for their in-laws.

Until the end of the 19th century there was no other state initiative in connection with occupational risks in the industry. Therefore industrial workers established mutual benefit societies (*segélyegyletek*) on a voluntary basis to provide benefits and support in case of illness and employment injuries. The societies were organized on a professional or on a regional basis. The leading mutual benefit society was the General Sickness and Disabled Mutual Benefit Society for Labourer (Általános Munkás Betegsegélyező és Rokkantpénztár) established in 1870.[3]

The first act which ordered the insurance of workers in case of sickness was Act XIV of 1884 called *Factory Act* (1884. évi XIV. Ipartörvény). The aim of the Act was the assertion of the workers' free decision. The establishment of mutual

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[2] *OTI: A magyar társadalombiztosítás ötven éve 1892–1942.* [The history of the Hungarian social insurance 1892–1942)] Országos Társadalombiztosító Intézet, Budapest 1942, p. 171.

[3] CZÚCZ OTTÓ: *Szociális jog I.* (Social law I.) Unió kiadó. Budapest. 2000. p. 66–68.

benefit societies was on a voluntary basis (with the majority vote of the workers), but in case of establishment the membership was obligatory for workers and journeymen. In this connection a prelude to social insurance appeared in the Factory Act.

The following were determined in the statute of mutual benefit societies: the rate of contributions, circumstances in which journeyman (iparossegéd) had a claim to benefit, and the highest rate of benefits. Apron-men had to pay contributions after every journeyman of theirs. Both apron-men and journeymen took part in the administration of mutual benefit societies [Par. 142-146 of the Factory Act].[4]

A couple of years after the Factory Act in 1891 the first obligatory insurance scheme was introduced with *Act XIV of 1891* [1891. évi XIV. törvénycikk a kötelező betegségi biztosításról]. The insurance covered the risk of sickness extended also to cases where sickness or death was caused by employment injury. It means that the general rules were used also in occupational cases.

Everyone was insured – independently of age, sex, citizenship – who was employed in a designated industry under the scope of the Factory Act in case that his/her wage was not more than a certain amount.

Sick-relief funds provided benefits in kind and cash benefits. Benefits in kind were free medical attendance, medicament, medical aid [gyógyászati segédeszköz], cash benefits were sick-pay (táppénz), maternity benefit (gyermekágyi segély), funeral allowance (temetési segély).

For financing the benefits employers and employees paid contributions, employers 1/3, employees 2/3 of them. The rate of the contribution was between 2–5 per cent of the wage depending on the decision of the funds.

The *employers' liability* for occupational damages was under the rules of Civil Law, and the processes of employees charged the employers deeply. To avoid the processes in case of occupational accidents, employers insured their employees by private insurance societies. Therefore at about the turn of the century the accident insurance was the employers' responsibility. Under these circumstances the employers urged the establishment of obligatory accident insurance.

In 1907 the first obligatory accident insurance scheme was established with *Act XIX of 1907*. The insurance covered workers employed by companies and factories which were under the force of the Act, apart from the sex, age, wage, of the worker or from the continuity or quality of the employment. However, the wage of the employee was considered in connection with accidental compensation and cost assignment and assessment only up to 2400 crowns (korona) [Par. 3].

Factories which were under the scope of the Act were "dangerous factories". However, the insurance was not extended to the mines, there mutual funds (bányatárspénztárak) provided benefits in case of an industrial accident.

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[4] BIKKAL DÉNES: *Magyar szociálpolitika. A dolgozó társadalom szociális védelme Magyarországon.* (Hungarian Social Policy. The social protection of working persons in Hungary), Budapest, Danubia kiadó, 1943, p. 98.

Act XIX of 1907 provided, in case of accident with physical injury, free medical attendance, medicament and medical aid after the 11th week of the accident (for the first 10 weeks these benefits were assumed by the health insurance scheme).

In case of incapacity or loss of working potential workers received accidental benefit (baleseti járadék). The amount of the accidental benefit depended on the degree of disablement and on the wage which could have been considered: e.g.: in case of full disablement the benefit was 60 per cent of the annual wage, while in case of decrease of working potential – if the decrease exceeded 10 per cent – the worker received partial compensation.

If the insured worker died in consequence of an industrial accident, the in-laws received funeral allowance and allowance was paid for orphans and widows/widowers and parents. Parents were only entitled to allowance if they had been dependent on the insured worker. The degree of the allowance was: for widows and parents 20 per cent for orphans 15 or 30 per cent of the wage of the deceased worker.

The costs of the compensation were financed by the employer. The Act described 3 ways of contribution: 1. accidental fee (baleseti díj) 2. accident contribution (baleseti járulék) 3. capital-coverage fee (tőkefedezeti díj). According to the Act the accident insurance scheme worked on a pay-as-you-go basis. [Par. 36.] The accidental fee was paid by employers who usually employed not more than 5 employees and by employers who insured themselves on a voluntary basis. Accidental contribution was paid by employers with compulsory insurance obligation. The level of the contribution was defined in accordance with the "danger rate" (veszélyességi arányszám) of the factory and the paid wages [the "danger rate" meant that factories were graded in danger classes according to the accident statistic results]. That means that employers financed the costs of accidents adequate to their default on the rules of prevention of industrial accidents. The Act laid down that capital reserve had to be collected with paying capital-coverage fee.

After World War I, owing to the increase in the number of patients, the level of contributions was increased and the degree of services was enlarged by *Act VII of 1917*. However, because of the status of the economy of the country, these provisions were not completely implemented.

Act XXI of 1927 brought an innovation in the accident insurance scheme, compensation was introduced also in cases of occupational diseases. Insured were factories which were under the scope of the Factory Act and the benefits were earnings-related. Act XXI of 1927 described the particular branches in which accident insurance was an obligation. The insurance covered workers employed by insured companies and factories, or companies belonging to the industrial or commercial branches mentioned in the Act apart from the sex, age and citizenship of the worker if the worker received wage from employment relationship. The Act allowed not insured workers to insure themselves on voluntary bases.

The Act provided free medical attendance, medicament, medical aid [gyógyászati segédeszköz], sick-pay (for the first 10 weeks of the incapacity it was 60 per cent and after that period 75 per cent of the weekly wage), and accidental benefit (baleseti járadék) was paid when the incapacity of the worker had a duration of more than a year. (The level of the accidental benefit was in case of full incapacity 66.6 per cent of the average wage, in case of partial incapacity it was proportional to the incapacity.)

If the insured worker died, survivors received compensation in form of funeral allowance (temetési segély) and survivor's benefits (the amount of the benefits was: for widows 20 per cent and for orphans 15 per cent and 30 per cent of the wage of the insured person). The compensations were financed by contributions which were 7 per cent of the wage of the insured person (for workers with daily pay it was 6 per cent of the wage).[5]

After World War II regulations were introduced concerning the reporting and examination of accidents and occupational diseases, and certain questions of compensation.

The reform of the pension system also brought changes in the field of accident insurance. The *Law-decree No. 30 of 1951* called the First United Pension Act (1951. évi 30. sz. törvényerejű rendelet – az első egységes nyugdíjtörvény) laid down that workers who lost more than 15 per cent of their working potential because of an industrial accident or an occupational disease were entitled to accidental benefit (baleseti járadék) apart from their service time. If the loss of working potential was not more than 25 per cent, the worker received accidental benefit for 2 years. If the loss of working potential exceeded 67 per cent, the worker became entitled to accident-related disability pension (baleseti-rokkantsági nyugdíj). The level of the benefit depended on the level of the loss of working potential. There were 6 grades between 16 and 67 per cent loss of working potential and the benefits were adjusted according to them, between 8-45 per cent of the wage of the insured person. The Law-decree established the 3 degrees of disability (Class I, Class II, Class III), which grading is still used. The amount of the accident-related disability pension depended also on the degree of disability.

In case of the death of the insured person as a result of an industrial accident or an occupational disease, survivors received accident-related retirement benefits if the insured person acquired enough service time. The contribution was 4 per cent of the wage and it was paid by employers. Accident-related benefits and pensions were financed from those contributions. (Employees paid 1 per cent earnings-tax [kereseti adó]). The differentiation of factories in accordance with the dangerousness of their activities was abolished, and the accident insurance system was integrated partly in the pension and partly in the health insurance system.[6]

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[5] JAKAB ÉVA MÁRIA – MOLNÁRNÉ BALOGH MÁRIA: *Baleseti biztosítás* (Accident insurance). Szeged, Pólay Elemér Alapítvány, 2004, p. 20–30.

[6] CZÚCZ OTTÓ: *Szociális jog I.* (Social law I.) Unió kiadó, Budapest, 2000, p. 86–87.

In 1954 a new pension act was created. The *Law-decree No. 28 of 1954* called Second United Pension Act (1954. évi 28. számú törvényerejű rendelet) increased the amount of accidental benefit (grades 5 and 6), accident-related disability pension and widow's pension. This was the first act which determined a minimum amount of a pension.[7]

In 1958 the review of the pension system became necessary again. It was realized with *Law-decree No. 40 of 1958* called the Third United Pension Act (1958. évi 40. számú törvényerejű rendelet). The Law-decree increased the necessary service time and the period in which the wages had to be considered to create an average earning. This Law-decree was in force until 1975.[8]

In 1975 *Act II of 1975* was created, which integrated all social insurance schemes (health care, maternity benefits, child care, pensions and accident-related benefits). The regulations pertaining to accident insurance were placed in a special chapter to highlight their importance.

Health insurance became partly universal, because benefits in kind were provided on the basis of citizenship. Cash benefits were provided as before only to insured persons. The definition of industrial accident was extended with accidents at community work and with accidents happening during providing social insurance benefits. The Act excluded workers from receiving accident-related benefits only if the accident was caused by him/herself.

In case of industrial accident or occupational disease, the Act provided medical attendance, medical aid, medicinal water, medicinal baths, prosthetic dentistry, in-patient care, accident-related sick-pay, reimbursement of travel expenses (ambulance transport), funeral allowance (within the frame of health insurance) and accidental benefit, accident-related disability pension, accident-related widow(er)'s pension, severance pay, accident-related orphan's allowance, accident-related parental pension (within the frame of the pension insurance).

In order to finance these benefits, the level of the contributions was increased. Employers were classified into three groups and the contributions were 10–17–22 per cent of the wages.[9]

2. The workers' compensation system in force

2.1. The legal basis of workers' compensation system

In 1997 the social insurance system was reformed after the change of the political regime with *Acts LXXX, LXXXI and LXXXIII of 1997*, which Acts are still in force. Act LXXX of 1997 is on persons entitled to social security and private pensions, as

[7] LACZKO I. (szerk.): *A magyar munkás- és társadalombiztosítás története.* (The history of the Hungarian workers' and social insurance). Táncsics kiadó, Budapest, 1968, p. 186.

[8] JAKAB ÉVA MÁRIA – MOLNÁRNÉ BALOGH MÁRIA: *Baleseti biztosítás.* (Accident insurance). Pólay Elemér Alapítvány, Szeged, 2004, p. 31–34.

[9] CZÚCZ OTTÓ: *Szociális jog I.* (Social law I.) Unió kiadó, Budapest, 2000, p. 95–97.

well as the coverage of these services. Act LXXXI of 1997 is about the social insurance based pensions and Act LXXXIII of 1997 is about health insurance.

It must be mentioned that Hungary has ratified the most important ILO Conventions and recommendations relating to workers' protection. These are the following: 1) Occupational Safety and Health Convention No. 155 and the relating Recommendation No. 164., 2) Occupational Health Service Convention No. 161. and the relating Recommendation No. 171. Including the above-mentioned two conventions, Hungary has already ratified 33 occupational safety and health related conventions. However, there are some unratified conventions such as Convention No. 170. concerning Safety in the use of Chemicals at Work, or Convention No. 174 concerning Prevention of Major Industrial Accidents, etc.

In 1997 two separated funds were established which represent the two branches of social insurance in Hungary: the health insurance and the pension insurance. Benefits of accidental insurance are divided between these two branches according to the type of the benefit.

Accident-related benefits provided by health insurance are:

a) health care services in case of an accident (medicines and appliances are free of charge),

b) accident-related sick pay,

c) accident-related annuity,

Accident-related benefits provided by the pension insurance system are:

a) accident-related disability pension,

b) accident-related survivor's retirement benefits:

– accident-related widow(er)'s pension,

– accident-related orphan's allowance,

– accident-related parental pension.[10]

The system is financed by contributions which are paid both by employers and insured persons. The insured person shall pay health insurance contribution in a rate of 4 per cent and pension contribution in a rate of 8.5 per cent. (If the insured was a member of private pension insurance[11] the rate is 0.5 per cent and the rest (8 per cent) is paid to pension insurance). Employers shall pay 29 per cent contribution of which 18 per cent is pension insurance contribution and 11 per cent health insurance contribution. Special accident contribution (5 per cent) shall be paid by retired persons who are self-employed (private entrepreneur) or employed by private entreprises (they are considered as persons engaged in supplementary activity). Employers shall pay as contribution one third of the sickness benefits disbursed to any insured person during the period in which the person is incapable of work or is undergoing treatment in hospital (sick-leave contribution).[12]

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[10] CZÚCZ OTTÓ – HAJDÚ JÓZSEF – POGÁNY MAGDOLNA: *Szociális jog II.* (Social law II.). Unió kiadó, Budapest, 2005, p. 131.

[11] It was introduced by the Act LXXXII of 1997 on private pension and private pension funds.

[12] CZÚCZ OTTÓ: *Szociális jog I.* (Social law I.). Unió kiadó. Budapest. 2000. p. 132–139.

2.2. The personal scope of the system

There are three main groups of persons who are entitled to work accident benefits and pensions. The *first group* is the group of the insured persons who are entitled to all types of social insurance benefits. The *second group* is constituted by persons entitled only to certain designated work accident benefits (namely worker's compensation) and the *third group* is the "self-employed or entrepreneur engaged in supplementary activity" (kiegészítő tevékenységet folytató egyéni vagy társas vállalkozó).

1. The following persons shall be considered as insured:

a) employment relationship in a wide sense: persons in employment relation under Labour Code, public employees, civil servants, persons in service relation with courts or prosecutor's offices, professional members of the armed forces, authorities maintaining the public order and civilian national security services, professional foster parents, contractual members of the armed forces, and persons in scholarship-employment relation, irrespective of whether it is a full- or part-time employment (hereinafter referred to as employment relation);

b) members of co-operatives if such members personally participate in the work of the co-operatives as employees or on an entrepreneurial basis (excluding full-time student members of school-based co-operatives);

c) students pursuing studies in a vocational school under a training contract;

d) persons receiving income subsidy, unemployment annuity, entrepreneur benefit or unemployment benefits disbursed prior to retirement;

e) private entrepreneurs not considered to be engaged in supplementary activities;

f) company members not considered to be engaged in supplementary activities;

g) ecclesiastical persons who serve in the Church and members of religious orders;

h) persons personally working for a fee within the framework of some employment-type legal relationship (for example: working at home, mandate, work performed under commission contracts or usage contracts, contributing family member), provided that the income serving as the contribution base and earned from such activities in the month under consideration reaches thirty per cent of the minimum wage (62 500 HUF in 2006) valid on the first day of the preceding month, or one thirtieth of that amount for each calendar day (hereinafter as other work-related legal relation);

i) in addition to the above-mentioned sub-paragraph h), any person who is an elected official of a foundation, social organization, association of social organizations, condominium co-operative, association, public body, quasi-private company, chamber, insurance fund, private company – not including the business managers or executive managers of private companies considered as company members –, an elected official of Employee Share Ownership Program

organizations, voluntary mutual insurance funds, compulsory private pension funds, an elected representative (official) of the local government, or who is a mayor working on voluntary assignment and whose fee – regarded as income serving as the contribution base – reaches the level specified in point g), shall be regarded as a person working within the framework of other work-related legal relation.

2. The following persons shall be considered as persons entitled to certain accident related benefits, which persons are grouped according to the received benefits.

2.1. Accident-related health care services shall be disbursed to any person who

a) is a student at an educational and vocational institution, higher educational institution, or receives education/vocational training in an institution that does not belong to the school system, not including foreign citizens,

b) suffers from a mental disease or some kind of addiction and who is undergoing treatment in an institute of socio-therapy,

c) is under criminal detention, is under preliminary confinement, is in custody, is serving a sentence of imprisonment

d) does voluntary work, especially if he/she suffers an accident or an injury to health in the course of life-saving, averting accidents or calamities, or donating blood,

e) performs work in the public interest or does community work.

2.2. Accident benefits, accident-related disability pension and accident-related survivor's retirement benefits shall be disbursed to any person, other than those specified as insured, who is considered to be performing supplementary activity as a private entrepreneur or company member, or - as an direct entitlement pensioner – is in any employment relation, other work related legal relation or is the member of a co-operative.

The social insurance system shall not cover:

a) the diplomatic representatives of foreign states, foreign personnel of such diplomatic representations, foreign citizen representatives (staff members) of international organizations enjoying diplomatic immunity, such persons' foreign citizen employees residing in Hungary, as well as such person's foreign citizen spouses and children living together with them and residing in Hungary;

b) persons considered as foreigners and employed in Hungary by a not registered foreign employer, who are under the scope of regulation 1408/71/EGK or international agreements and also in cases of posting, appointment, renting workforce if an international contract does not disposes differently from this.

2.3. Contingences covered by the system (material scope)

A. Industrial accident

The social insurance system also covers industrial injury and occupational diseases. Act LXXXIII of 1997 (Health Insurance Act) gives the definition of an industrial accident as follows: *industrial accident* is 1) the accident happening during work in workplace or in connection with that or 2) on the way to work or back home (commuting accident). 3) It is also an industrial accident if the insured person suffers an accident during voluntary work or 4) during requisitioning certain social insurance services (with the aim of adjusting invalidity or disablement or appearing at medical examination and attendance in connection with becoming capable of work) [Health Insurance Act Par. 52 (1)–(2)].

Not industrial accident is the accident which happens

a) solely because of the intoxication of the injured person,

b) during doing not permitted work, or

c) during work which does not belong to the tasks of the insured person, or

d) during not permitted use of a vehicle, or disorderly conduct at the workplace,

e) on the way to work from the residence or back home from work, going unjustified not on the shortest route or during unjustified interruption of the travelling.

The insured person is not entitled to accident-related health insurance benefits if the injury was caused wilfully/intentionally by the injured person or with collaboration of a doctor or if he/she delayed in reporting the accident.

Accidental insurance covers the risks of incapacity, disablement and the loss of alimenter relatives and offers benefits for the injured person, and – in case of death caused by industrial accident – surviving dependents (widow(er)s, orphans, parents).[13]

B. Commuting accident

According to the above-mentioned, commuting accidents are covered by the Hungarian social insurance system. It is essential concerning commuting accidents that the insured person shall go on the shortest route and shall not make unjustified interruptions on the way. First of all the insured person shall be on the way, which means if the accident happens inside the apartment/house used personally by the insured, the accident will not be considered as a commuting accident. Justified interruptions are also described. According to that the insured person will not lose the right to accidental related benefits if he/she suffers an accident during taking

[13] CZÚCZ OTTÓ – HAJDÚ JÓZSEF – POGÁNY MAGDOLNA: *Szociális jog II.* (Social law II.). Unió kiadó, Budapest, 2005, p. 131.

children to nursery, kindergarten, school, or nursing a close relative, or purchasing daily aliment or medicament.[14]

C. Occupational disease

The definition of *occupational diseases* (hereinafter: OD) is also determined in the Health Insurance Act. According to that an occupational disease is a disease which arises from the special dangerousness of the occupation of the insured person. Occupational diseases which qualify for accidental related benefits are ascertained by the decree of the government [Par. 52 (3)].

Since occupational disease is a legal term and not a medical one, the question is how to specify it. Some countries apply general clauses (or systems of proof); others opted for a system of listed - but limited - diseases. Hungary belongs to the second group (system of list). General pros and cons of listing occupational diseases: The first problem – which even proponents of list systems had to admit – was that of maintaining and updating OD-lists.

In Hungary recently 35 diseases are recognised and listed in the annex of Decree No 217/1997 (XII.1.) of the Government. The list also includes occupations that are assumed to lead to occupational disease as well as setting down time limits of exposure after which there is an assumption that any disease is an occupational disease (e.g. loss of hearing caused by noise; field of work working at any workplace where the noise emission exceed a specified level for at least 5 years). This system applies to all enterprises.The list of occupational disease will be abolished by the decision of Hungarian Constitutional Court from 1 January, 2007.

It appeared notable that wherever legislature is involved in updating OD lists there is often a sense of hesitation within the social security institution to propose amendments. The reason was that the social security system often did not want to put itself on the spot before legislature, which is why they often tend to hold back suggestions for changes. This observation was shared by a majority of the participants: the higher the administration level that approves modifications/amendments to an OD-list, the lesser the inclination of the actors involved to do so.

Furthermore, whenever more than one or two actors are involved in the decision making process, the hesitation becomes only greater. This could be reported from Hungary, where currently three agencies and three ministries are involved in the updating process (but changes are under way).

2.4. Work injuries and occupational diseases benefits covered

1. Accident-related health care and benefits for temporary disability are covered by the health insurance system:

[14] CZÚCZ OTTÓ – HAJDÚ JÓZSEF – POGÁNY MAGDOLNA: p. 136–137.

a) medical benefits (listed above, but medicines and appliances are free of charge);
b) temporary disability benefit;
c) work injury allowance.

2. Benefits for permanent disability are covered by the pension insurance system:
a) accident-related disability pension,
b) accident-related survivor's retirement benefits.

In case of accident-related benefits there is no minimum qualifying period.

2.5. Amounts of cash benefits and their method of calculation

– Work accident sick-pay: 100 % of the average income. Benefit is payable from the first day of incapacity for up to one year with the possibility of an extension for a further year.

– Work injury annuity: the level of benefit expressed as a percentage of monthly average earnings and determined by degree of invalidity:

Capacity reduced by	16–25 %	26–35 %	36–49 %	50–66 %
Level of benefit	8 %	10 %	15 %	30 %

– Work accident disability pension: it is paid according to the same three classes used in the determination of invalidity pension. The levels are expressed as a percentage of the monthly average earnings.

Class	**I**	**II**	**III**
Definition	100 % reduction of working capacity, need of permanent care by others	100 % reduction of working capacity but no need of permanent care by others	Min. 67 % reduction of working capacity but not totally incapacitated for work
Level of benefit	70 %	65 %	60 %

3. Compensatory Liability of the Employer under the Hungarian Labour Code in force

3.1. Scope of Compensatory Liability of the Employer under Hungarian Labour Code

The rules of employers' liabilty is regulated mainly in Labour Code, but the Labour Safety Act is applied as a background legislation. According to Articles 174–187 of the Labour Code, the employer shall bear full liability, irrespective of intention or neglect, for damage caused to the employee within the scope of his/her employment. The employer is exempted from liability if he/she proves that the damage was brought about by an unavoidable cause outside his/her field of operations or exclusively by the behaviour of the aggrieved party where such behaviour is unavoidable. The employer's field of operations includes causes arising from behaviour connected with activities pursued by the employer in the course of his/her duties and from the quality, condition, movement and operation of the materials, equipment and energy that are used. The employee shall prove that there is a causal connection between the damage incurred and his/her employment.

Concerning the unavoidable cause, judicial practice is based on the examination of objective possibilities. Two facts must be examined. First, it must be determined whether existing scientific and technological techniques or equipment could have prevented the damage or not. (It is not important whether or not the employer knew of these possibilities; their existence is considered decisive.) The fact that it may be difficult to obtain the necessary means of prevention does not excuse the employer. On the other hand, it must be ascertained whether the possibilities assured by scientific and technological development provided ample time for prevention or not. Activities aimed at preventing damage may not be formal since they must eliminate dangerous effects as far as possible (for example, it is not sufficient to hang out a sign saying 'Entry prohibited' in places where the possibility of accidents is high).

The employer is exempted – as mentioned above – if the damage is caused exclusively by the conduct of the employee where such conduct is unavoidable. Attention must be drawn to the view represented by the Labour Department of the Supreme Court according to which, in judging whether or not damage was caused by an act of a worker, the unfavourable effects and special conditions of the work must be taken into consideration. Even if an accident was the result of inattention, carelessness, neglecting technological and safety regulations on the part of the worker, this does not necessarily mean that these were the only causes; while performing his/her duties a worker is influenced by many other factors connected with the activity of the employer which may result in inattention. Similarly, if the employer knows of the violations of regulations, the worker alone cannot be blamed for the accident. It must also be considered whether an indisposition or

sickness of a worker is linked with the particular working conditions or with any kind of excess strain (e.g. too much overtime).[15]

The following are exceptions to this rule mentioned in previous paragraph:

a) A single individual employer, who is not a legal entity, employing a maximum of ten full-time employees shall be liable for damages caused to an employee in the event of his culpability. He/she shall be exempt from liability if he/she proves he/she was without guilt.[16]

b) The employer who is liable, according to the rules mentioned above, for damages caused to objects and things taken by the employee to his/her work place may stipulate that things taken into the work place are placed in a protective space (changing room), that the fact that they have been brought in should be reported, or prohibit, restrict or conditionally allow articles not required to carry out work to be brought to work. If the employee violates these regulations, the employer shall be liable only in the event of causing damage intentionally.[17]

3.2. Contribution of the Worker

The part of the damage caused by the employee's culpable behaviour shall not be compensated.

3.3. Damage

1. Types of Damage

The employer is obliged to compensate for all damage caused to the worker. The following are included here:

a) lost earnings,
b) loss of goods,
c) any expenses in connection with the damage,
d) non-material damage.

a) Lost Earnings

Income lost within the framework of employment may include the following:

– lost wages, which are determined both in cash and in kind;

– the cash value of those regular services to which the employee is entitled on the basis of the employment over and above the wage if prior to the occurrence of the damage caused he/she regularly availed him/herself of these;

– other regular earnings lost outside of employment as a result of the grievance;

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[15] RADNAY JÓZSEF: *Munkajog.* (Labour Law). Szent István Társulat, Budapest, 2003, p. 204–205.
[16] KISS GYÖRGY: *Munkajog.* (Labour Law). Osiris Kiadó. Budapest. 2005. p. 280-281.
[17] KISS GYÖRGY: p. 284.

– earnings the employee assert as a result of extraordinary work performance despite major handicaps arising from the grievance shall also be compensated.

In determining lost income, consideration shall also be made for future changes which can be reckoned in advance for a specific time.

No compensation shall be made for those services which, by their nature, are inherent in the work done, nor shall there be compensation for expenses which are normally incurred during the course of work and reimbursed accordingly.

The amount of lost wages shall be calculated according to the regulations of the Labour Code pertaining to the calculation of average earnings. If there has been a general wage increase within the period that is normative for the calculation of average earnings, then, in the case of an employee employed under a performance wage, his/her lost wages shall be calculated only from the time of the wage increase if this is more favourable for the employee.

The value of provisions 'in kind' shall be determined on the basis of the retail price at the time compensation is determined.

b) Material Damage

The sum for material damage shall be calculated on the basis of the retail price with consideration for wear and tear. If the damage caused to an item can be repaired without loss of value, then the repair cost shall be taken into consideration when assessing the damage.

c) Expenses

The responsibility of the employer for compensation also includes the obligation to cover all the employee's expenses both in connection with the damage and redressing the consequences. In this field, the Labour Department of the Supreme Court is also concerned with the employee's interests. Three typical examples may be mentioned here:

a) Expenses in connection with medical treatment. Since medical treatment for the most part is free of charge on the basis of social insurance, this includes expenses incurred in visiting the insured person in hospital, the supply of food during nursing at home, and payment for such nursing. In the latter case, payment is due even if nursing is done by a member of the family (e.g. wife or husband, etc.) not otherwise employed. Those medical expenses requiring payment, such as a second pair of orthopaedic shoes, also belong to this section. Taking into consideration the importance of restoration to health, these expenses are also assured in cases where the accident (occupational or other disease) resulted partly through the fault of the employee himself.

b) Extra expenses incurred as a result of the accident (occupational or other disease) in the employee's everyday life: payment for nursing, extra heating and lighting, and costs in connection with accommodation. In this latter case, judicial

practice accepts increased rent if the injured person cannot remain in a room together with the other members of family, as well as cost connected with the installation of a bathroom if the worker needs special washing facilities as a consequence of the accident. Extra travel expenses may also be mentioned here. In this respect, the Labour Division of the Supreme Court will approve expenses for the purchase of an individual car in the case of an employee's mobility having become greatly restricted. The employee might be in need of constant nursing or may require domestic help. According to the Supreme Court he/she is entitled to this assistance even if the work is done by a member of the family.

c) Another group consists of expenses arising from the proceedings connected with the employee's demands (for example, correspondence, travel, legal fees).

d) Non-material Damage

The employee shall also be compensated for non-material damage arising from the conduct of employers.[18]

3.4. Survivors' Claims

The employer shall also compensate the employee's close relatives for their damage and justified expenses arising in connection with the damage caused. If the employee dies as a result of injuries sustained or disease inflicted, his/her dependent relatives may, in addition to the above, claim compensation to substitute for the provision of a sum that ensures the meeting of his/her needs, at the level maintained prior to the grievance, it is necessary to take into account his/her actual or expected wage and income.

3.5. Calculation of Compensation

In calculating the amount of compensation, the following shall be deducted:

a) social insurance contributions due on the wages lost;

b) provisions due within the scope of state health care and social security;

c) what the employee earned through the utilization of his/her remaining working capacity or could have been expected to have earned in the given situation;

d) what the employee (his/her relatives) attained through the utilization of the damaged item;

e) what the person entitled thereto acquired as a result of expenses that were saved as a result of the damage.

[18] Lehoczkyné Kollonay Csilla (szerk.): *A magyar munkajog II.* (Hungarian Labour Law II.) Kulturtrade Kiadó, Budapest, p. 84–85.

If the extent of the damage or a part of it cannot be precisely calculated, the employer shall pay a sum in general compensation, which would appropriately and fully compensate the aggrieved financially. General compensation may also be established in the form of an allowance.

An allowance may also be established as compensation. An allowance shall usually be established when compensation is intended to be used for the support of the employee or those of his/her relatives who are entitled to support on the basis of their relationship with him/her, or as a supplement to his/her support.

The sum of compensation established for an employee who is a minor shall be reviewed upon him/her turning 18 years of age or after one year of having completed his/her studies pursued in the interest of acquiring vocational qualifications. Compensation due to him/her for the time subsequent to that shall be determined in accordance with the changes that have occurred in his/her ability to work and his/her qualifications.

3.6. Changes after the Determination of Compensation

If subsequent to the establishment of compensation a substantive change in the circumstances of the aggrieved employee occurs, both the aggrieved and the employer and, in the event of compensation provided on the basis of liability insurance, the insurance company may request modification of the specified compensation.

In determining the extent of the wage increase serving as the basis for modifying compensation, the actual average annual wage increase of employees working in the employer's department where the aggrieved was working at the time the grievance occurred and in a position identical to that of the aggrieved shall be normative. In the absence of employees in identical positions, the actual average annual wage increase in the department shall be taken into consideration as the basis for the modification. In the event of the department mentioned above having ceased to exist, employees of the employer in positions identical to that of the aggrieved or, in the absence of such employees, the extent of the actual average annual wage increase at the employer's shall be normative in modifying compensation. [19]

3.7. Procedure

The employer shall, within 15 days of learning of the damage caused, call on the aggrieved party to present his/her claim for compensation. The employer shall give a written, reasoned response within 15 days of the announcement of the claim for compensation.

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[19] LÁSZLÓ NAGY: Hungary (Hungary is an integral part of *Labour Law and Industrial Relations* in the *International Encyclopaedia of Law* series). Kluwer Law International. Kluwer Law International The Hague. 2000, p. 158-174.

If, in connection with a grievance, several additional claims for compensation arise, each due at different times from one another, their period of prescription shall be calculated separately and independently of each other, each commencing from the time it becomes due. The period of prescription shall with the exception mentioned above commence

a) on the first payment day of sick pay,

b) at the time when the reduction in the ability to work as a result of the grievance first led to damage manifested in loss of income, and finally,

c) from the time of being granted a disability pension.

An allowance claim shall only be asserted to apply retrospectively for a period of more than six months if the person entitled thereto bears no responsibility for failing to assert the claim or if the employer has failed to comply with his/her obligations to inform the employee on his/her rights. No allowance claim shall be asserted retrospectively for a period of over three years.

The employer or the insurance company may, if the need arises, annually request the employee or his/her close relatives for a certificate attesting to his/her income arising from the performance of work and the state of his/her income.

The employer shall notify the aggrieved within 15 days if he/she has implemented a wage increase which would serve as the basis for modifying the extent of compensation.[20]

3.8. Employer's obligations relating to the protection of the worker's life and health under Labour Safety Act

The objective of the Labour Safety Act was to establish the personnel, material and organizational conditions for ensuring occupational safety and health, in accordance with the principles set forth in the Hungarian Constitution, in the interest of protecting the health and ability to work of persons in organized employment and improving working conditions, thereby preventing industrial accidents and occupational diseases. The Act defines the responsibilities, rights and obligations of the State, employers and employees.

Occupational health care. In Hungary every employer must provide occupational health care service for all the employees, in compliance with the Labour Safety Act and the sectorial decrees. One service (consisting of one physician and one nurse) may cover 1000–2000 workers, depending on the health risks. Occupational health examination serving as the basis of risk assessment makes 50 % of the work of the occupational health care service, while the other 50 % is constituted by the pre-employment, periodic, extraordinary and final fitness for work examinations.

[20] LÁSZLÓ NAGY: p. 158–174.

Employees without fitness for work examination may not be employed in Hungary. The occupational health care service knows and maintains good relationship with the management of the institution or enterprise served. Participation in a pre-employment medical examination is compulsory for everybody, and the examinations must be repeated annually. The performing of the examinations is controlled. Occupational health service participates in the tasks related to labour protection. Prior to employment the labour protection officer provides training and its accomplishment is documented.

4. The institution of the Hungarian labour inspection

4.1. Organisation for Labour Inspection

The Hungarian Labour Inspectorate is an independent national authority under the supervision of the Minister of Social Affairs and Labour, and was set up in 1984 to carry out occupational safety tasks of governance and defined official occupational safety tasks; its regional authorities are the Occupational Safety and Labour Inspectorates.

Hungary has comprehensive legislation of its own on health and safety at work, chemical safety, administration and inspection in line with European standards. The 1993 Act No XCIII on Labour Safety, as amended in 1997 and 2001, fully implements Council Directive 89/391/EEC on health and safety at work.

In Hungary the State's obligations concerning health and safety at work are met by the following three central administrative agencies:

a) The *Hungarian Labour Inspectorate* (Országos Munkabiztonsági és Munkaügyi Főfelügyelőség, hereinafter: OMMF) under the direction and supervision of the Minister for Social Affairs and Labour, deals with occupational safety and labour relations. The local regional inspectorates of the OMMF monitor compliance with occupational safety rules at workplace level within their area of jurisdiction. The validity of the Labour Safety Act extends to "organized work" only, and the activities carried out by individuals not employed or in households are exempted from the obligations stipulated by the Act.

As the local Focal Point of the European Agency for Safety and Health at Work, the OMMF maintains close contact with the Agency and regularly fulfils the tasks ensuing from its respective role. The Focal Point has established and maintains a national information network, organises and coordinates the events of the European Week and the Good Practice competition, and plays an active role in the Agency's activities as regards incoming and outgoing information.

The OMMF is established and supervised by the Minister for Social Affairs and Labour. The OMMF is a legal entity with earmarked resources from the State budget which initiates, prepares and promotes occupational safety-related measures by the State and exercises general regulatory competencies i.e. performs all the

practical tasks for ensuring safety at work. The Director-General of the OMMF is appointed and dismissed by the Minister for Social Affairs and Labour.

b) The *National Public Health and Chief Medical Officer's Service* (Állami Népegészségügyi és Tisztiorvosi Szolgálat, hereinafter: ÁNTSZ) – with authoritative supervisory powers in the field of occupational health and chemical safety in the field of labour protection – is under the control of the Minister for Health.

Within the ÁNTSZ the occupational health-related work is performed by physicians and college graduate inspectors specialised in public hygiene and epidemiology. Persons with diplomas from other fields but also involved in occupational health and chemical safety matters may work in certain fields, but only with limited powers until such time as they qualify as inspectors and gain suitable practical experience.

Occupational health inspectors employed at the municipal institutes may draw on the assistance of experts in the county institutes or the Chief Medical Officer's Office.

The occupational health inspectors carry out workplace inspections, whereas the measurements and sampling are performed by the ÁNTSZ laboratories or other accredited laboratories.

The ÁNTSZ is the supervisory body for occupational health and chemical safety operating as a central body with earmarked resources from the State budget and powers deriving from Act No XI. of 1991 on the National Public Health and Medical Officers' Service. The Service, headed by the Chief Medical Officer, is under the direct control of the Minister for Health. The Service consists of 20 offices at county level, including the capital Budapest, and 136 town/district offices with primary powers, headed by certified hygiene specialists and epidemiologists. The powers of the ÁNTSZ extend, with the exception of the armed forces and institutions for domestic affairs, to all natural and legal persons/entities as well to associations without legal personality.

c) The *Hungarian Mining Office* (Magyar Bányászati Hivatal, hereinafter: MBH) – supervising health and safety in mines – is run by the Ministry of Economy and Transport.

4.2. Responsibilities of the Labour Inspectorate

4.2.1. In the field of health and safety

A. The responsibiltity of the OMMF

a) On the basis of its powers to supervise occupational safety, the OMMF initiates and supports the following tasks:

– monitoring and enforcement of compliance with occupational safety regulations, registration of occupational accidents, and collation and publication of statistics;

– preparation of the national programme on safety at work;

– stipulation of basic requirements for safe and non-hazardous working conditions, and of the respective rights and obligations involved;

– monitoring, on a national scale, of the safety of working conditions, and publication of findings and observations.

b) Reconciliation of interests:

– attendance at the national forum on reconciliation of interests by the Director-General;

– involvement in the work of the Interdepartmental Coordination Committee on Labour Safety.

c) Administrative duties:

– acting as a body with overriding powers;

– acting as a body with second-grade powers through its Director-General, who supervises the appeals lodged against sanctions imposed by the various OMMF inspectorates;

– ruling on applications challenging sanctions imposed by local inspectorates.

d) Operation of a public information system.

e) Financing of education and awareness-raising measures in relation to safe and non-hazardous working conditions, by means of the fines collected for non-compliance with occupational safety regulations.

f) Fulfilment of tasks arising from the Labour Safety Act and other administrative regulations within its area of responsibility.

g) Active participation in the work of the Minister for Social Affairs and Labour in the field of occupational safety.

B. The responsibility of the ÁNTSZ

The primary objective of occupational hygiene is prevention. The tasks in the field of occupational health are prediction, recognition, assessment, monitoring and handling of hazards and risks endangering health at work.

The Service performs the following tasks:

– fixing of personal and objective conditions for a healthy working environment, establishment of acceptable limit values for health-related risk factors ("occupational hygienic limit values") as well as health regulations aimed at the prevention of occupational diseases, contamination, severe exposure;

– exercise of supervisory powers to carry out inspections and enforce compliance with occupational health regulations; checking and monitoring compliance with occupational hygienic limit values;

– investigation of cases of work-related disease, contamination or severe exposure;

– cooperation with other State bodies in ensuring a healthy working environment and preventing occupational injuries.

4.2.2. Monitoring general working conditions

a) The *OMMF* is also responsible for monitoring general working conditions with the exception of certain sectors (national defence, police and institutions under the direct control of ministers). Labour inspections encompass natural persons, legal entities, and other economic undertakings not considered legal entities, employing people above 18 years of age.

The labour inspections cover the following:

- compliance with formal rules governing employment;
- notification of the authorities;
- records of working time, leave etc.;
- compliance with rules relating to the employment of women, underage workers, disabled persons, etc.;
- compliance with of rules pertaining to working time, rest time, overtime work and paid leave, as provided for in collective work agreements;
- compliance with rules concerning wages;
- compliance with regulations applying to foreign employees, etc.

Half of the OMMF inspectors carry out inspections full-time, and the other half deals with occupational safety, also on a full-time basis.

As described above, on the basis of its powers to monitor work safety, the OMMF initiates the preparation of national programmes on safety at work, stipulates the basic requirements for safe and non-hazardous working conditions as well as the rights and obligations involved, monitors on a national scale the safety of working conditions, and publishes the findings and any observations.

b) *ÁNTSZ.* The ÁNTSZ has statutory powers to supervise occupational health. Within its area of responsibility, it is entitled to act in connection with infringements of occupational health regulations.

4.3. Technical advice and instructions for inspectors and for setting inspection standards

1. *OMMF.* Within its own area of responsibility, the OMMF promotes, supervises and enforces labour safety regulations at national level. It is the responsibility of the Supervision Department to provide technical advice and

instructions for the inspectors, and to set inspection standards beyond those defined under other legislation or international (e.g. ILO) conventions.

Quantitative monitoring of the inspectors' work is carried out regularly; the annual assessments are made on the basis of numerical data. No predetermined method for qualitative monitoring exists, not even in the EU. At the OMMF, the Supervision Department and the management perform the qualitative monitoring by assessing the measures and decisions made by the inspectors.

On the basis of education programmes fixed each year, the OMMF regularly organises training and retraining for its inspectors in order to bring their activities into line with European practice.

2. *ANTSZ.* The Chief Medical Officer of the ANTSZ issues work plans for the central and local offices with an exact indication of the deadlines and persons in charge. The priorities and targets are laid down in consultation with the respective department heads at the Chief Medical Officer's Office (legal provisions, specification of high risk factors, new pathogens, the examinations required for a proper evaluation of the status of occupational health with a view to contributing data for international programmes etc.).

While taking into consideration the exceptionally important tasks arising from local circumstances, the local offices incorporate central work plans into their own work programmes.

The Chief Medical Officer's Office is in the process of setting out the uniform aspects of the inspection work.

The implementation of the approved work plans is supervised both during and at the end of the year.

Structure of the Inspectorate in the Field Each OMMF regional inspectorate is headed by a director and two deputy directors – one supervising the occupational safety inspectors' work and the other monitoring the employment inspectors' activities. In smaller counties, however, there may just one deputy director. The inspectors at all levels are highly qualified graduate civil servants.

4.4. Powers of Labour Inspectors

a) *OMMF.* Under Article 81 of the Labour Safety Act, the range of activities of labour inspectors includes the following:

– monitoring enterprises to check whether employers are meeting their OSH obligations;

– checking whether workplaces, the operation of equipment, applied technologies, materials and personal protective equipment comply with requirements;

– investigation and review of measures of employers aimed at preventing occupational accidents and diseases;

– following up on the administrative obligations of employers (reporting and investigating accidents, diseases etc.). Under §84 of the Labour Safety Act, the inspectors have powers to

– oblige the employer to report in writing on the fulfilment of any safety requirements called into question;

– carry out inspections at all workplaces within their competence without any special permission;

– investigate occupational accidents, with the exception of the road and air accidents;

– draw the employer's attention to the need to meet the OSH requirements;

– impose deadlines on employers for the rectification of any shortcomings;

– prohibit work in the event of a severe infringement of safety rules for work procedures;

– stop work processes, prohibit work in all or part of an establishment, forbid the use of particular equipment, enforce safety inspections from time to time where the health of employees may be seriously endangered;

– conduct investigations where occupational accidents have not been reported correctly;

– investigate severe occupational accidents independently of the employer's responsibilities in this area;

– ban the use of a PPE if its legal conformity certificate is missing;

– oblige the employer to provide data concerning workers on nightshifts (average number of workers employed, any other information concerning the night shifts, and any changes introduced).

b) *ÁNTSZ.* The inspectors also have special powers within their area of responsibility. They have legal power to enter any workplace and inspect any workstation, following which they prepare written reports and, depending on the shortcomings identified, take the appropriate measures and monitor compliance with them.

Duties include the following:

– issuing instructions;

– limitation or prohibition of work;

– stopping the marketing/sale of certain objects or materials, or even placing restrictions on these;

– in cases of severe hazards or risk of mass injuries the Service is obliged to take all possible measures for the avoidance of the danger; other agencies may also be called in;

– violations of the occupational health regulations may involve sanctions, i.e. infringement proceedings and the imposition of penalties.

ÁNTSZ inspectors have the same powers as OMMF inspectors, and these powers are the same as those laid down under the relevant ILO Conventions.

c) OMMF/ÁNTSZ

If the occupational health and safety law and/or regulations stipulated in standards or other documents are violated, the enforcement agencies have the right to

- call on the employer to rectify any shortcomings;
- issue a written warning laying down a deadline for rectifying any shortcomings;
- issue a prohibition order with immediate effect in the event of imminent danger;
- enforce the rectification of deficiencies by imposing labour safety fine in cases where the employer fails to meet, or only partially meets, the prescribed safety requirements.

Failure to comply with the requirements of occupational safety standards:

- failure to effect the periodic safety inspection prescribed by law;
- failure to carry out the risk assessment prescribed by law;
- inoperability or absence of the necessary protective devices and personal protective equipment;
- lack of a medical certificate or report required for workers employed in dangerous workplaces, operating dangerous equipment or carrying out dangerous technological processes.

Based on the proposal of the inspector identifying a serious hazard, labour safety fines are imposed by the head of the competent regional inspectorate, or by the local chief medical officer within the sphere of competence of the Medical Officer's Service.

4.5. The aims and operating methods of the Labour Inspectorate

4.5.1. Preparation of national objectives

a) *OMMF*

On the basis of proposals and suggestions received from the regional directors, the Director-General of OMMF approves the national objectives appearing in the National OSH Programme. The annual plan and priorities are based on the following:

- statistical data on severe occupational accidents from the preceding year;
- information and suggestions from the regional inspectorates;
- proposals from the National Labour Safety Committee;
- changes in the law, checking how employers comply with legal requirements.

The national programme takes the form of, among other things, targeted inspection programmes throughout the country. In these programmes, the legal basis (i.e. the relevant laws and standards) are defined and a methodological handbook is also issued to give inspectors practical guidance.

On the basis of proposals and suggestions received from the regional directors, the Director-General of OMMF approves the national objectives set out in the National OSH Programme (see above).

Working out the criteria and methodology for a targeted inspection is based on a team work. Work involves three or four regional directorates under the overall control of a single person appointed to take charge of the preparatory work. Their suggestions and considerations are presented to the Director-General of the OMMF. Once the national objectives have been set out, and at least two weeks prior to the launch of the targeted programmes, the relevant inspectors at the regional inspectorates must also be provided with verbal information. On the basis of the remarks and suggestions made, the programme may still be modified if necessary.

Following the inspection, the coordinator summarises the findings and indicates whether the given targets have been achieved, and whether the programme should be carried on or not.

Apart from the nationwide action programmes, the local inspectorates carry out their own targeted inspections, the date of which is notified to the employers in advance.

The consistency achieved in inspection standards and the application of enforcement procedures. In the OMMF methodologies and procedures are developed at headquarters by the Supervision Department and then communicated to all regional inspectorates in order to ensure uniform enforcement practices as far as possible throughout the country. There is always scope, of course, for differences in approach between individual inspectors, who also have discretion to evaluate and consider the conditions and circumstances particular to any individual case.

b) *ÁNTSZ.* The primary objective of occupational hygiene is prevention. The Chief Medical Officer is responsible for drawing up the national priorities and objectives. The priorities and targets are determined with the involvement of the respective department heads of the Chief Medical Officer's Office (legal regulations; specification of high risk factors, new pathogens, the necessary examinations for the proper evaluation of the status of occupational health with a view to contributing data to international programmes, etc.).

The tasks in the field of occupational health are prediction, recognition, assessment, monitoring and handling of hazards and risks endangering health at work.

The Service performs the following duties:

– fixing of personal and objective conditions for a healthy working environment, establishment of acceptable limit values for health-related risk factors ("occupational hygienic limit values") as well as health regulations aimed at the prevention of occupational diseases, contamination, severe exposure;

– exercise of supervisory powers to carry out inspections and enforces compliance with occupational health regulations; checking and monitoring compliance with occupational hygienic limit values;

– investigation of cases of work-related disease, contamination or severe exposure;

– cooperation with other State bodies in ensuring a healthy working environment and preventing occupational injuries.

The annual work schedule of the regional inspectorates (apart from the targeted and action programmes defined by the inspectorates individually) must also include the nationwide targets set out by the headquarters. The inspectorates are obliged to conduct their inspections and prepare their reports by a deadline stipulated by the headquarters.

4.5.2. Proactive inspection for enforcement purposes

In order to promote the safe and non-hazardous work and implement their own annual work plans within their area, the local inspectorates of the OMMF make the following inspections:

- inspections announced in advance;
- inspections under targeted and action programmes;
- inspection of "new", non-registered employers;
- inspections performed in collaboration with other OSH boards;
- inspections initiated on the basis of complaints or by other bodies (e.g. the police), the press, etc.

Within the OMMF:

a) Inspections announced in advance: 3 to 10 days;

b) Inspections under targeted and action programmes: 1 or 2 days;

c) Targeted inspections: 1 or 2 months;

d) Inspection of "new", non-registered employers: a few hours, one day, or a few days;

e) Inspections connected with unforeseen events (e.g. occupational accidents): cannot be determined in advance;

f) Inspections performed in collaboration with other OSH boards: one or more days;

g) Inspections initiated on the basis of complaints or by other bodies: cannot be estimated in advance.

As a general rule, safety inspectors have to spend month at least 50% of their monthly working time on field work, i.e. on-the-spot inspections; the other half is spent on paperwork, training, further education, etc. There is no stipulated ratio of proactive to reactive inspections.

4.5.3. The workplaces' selection for inspection

According to the methodology guidelines from the OMMF, it is advisable to inspect an employer whose activities are in the first-grade hazard category and who employs at least 300 to 500 workers. (In the Labour Safety Act, economic activities are divided up into three hazard categories from the point of view of the safety and health of workers). Furthermore, companies known to have a high accident rate are subject to more frequent inspections. Complaints made by workers, passers-by or from no other source may also result in additional inspections.

Thanks to the continuous updating of databases, local inspectorates have appropriate information on almost all employers in the first- and second grade hazard categories. The most comprehensive picture of an employer can be gained through inspections announced in advance. The most effective general measures aimed at the prevention of the occupational accidents and diseases can be instituted under this type of inspection, which is performed by five or six inspectors for a period of three to 10 days depending on the OSH hazard category of the activities concerned, the technical level of the equipment, the number of employees, size of the company, etc. During the inspections, the inspectors are accompanied by the employer's OSH experts and head technicians, as well as by the local managers with powers to act, and the OSH representatives.

The ÁNTSZ. The inspectors have registered information on the "units" within their area of responsibility, which are classified according to the nature of the activities involved. Information is also collected from the compulsory data reports from employers. By means of a computer programme developed by the OMMF's own Informatics Department, inspection data and cycles can be closely monitored. ÁNTSZ inspectors can follow the inspection cycles from their own records.

4.5.4. The rules of workplace- inspection

a) *OMMF.* Independently of the inspections announced in advance, "action and targeted inspection campaigns" are also possible, which focus on a particular field of activity or technological process (e.g. metal-cutting, welding), equipment category (e.g. materials handling equipment, hand-held electric equipment, etc.) within the area of responsibility of the local inspectorates.

The aim of these investigations is to perform the inspection at as many employers as possible with a view to obtaining the widest possible knowledge for the Inspectorate so that the most effective prevention measures can be taken. As with the nationwide inspections, the coordinators of the targeted and action investigations draw up detailed inspection checklists and methodological guidance. The inspectors draw up report on the facts and findings which are signed by all parties present during the inspections. On the basis of the collected findings and data, the coordinators decide whether it is justified to undertake repeated

investigations in the given field in the near future, or whether it would make sense to extend the inspections within the sector concerned to a national scale.

The safety and employment inspectors' task is to find all employers within their territory. The routine daily inspections at "new" employers shed light on the employment and social situation as well as on employment safety. The facts and findings in these cases are also reported and signed by those present during the inspections.

b) ÁNTSZ. Campaign inspections are performed by the use of questionnaires compiled on the basis of previously set criteria. Inspections in collaboration with other OSH inspection bodies (ÁNTSZ, tax authorities, Ministry of the Interior, etc.) aim to eliminate certain local problems on occupational safety, employment, occupational health, etc. These inspections are performed within a clearly defined framework. The results are also reported in writing and are signed by all the parties concerned. The investigating bodies evaluate the results jointly. The administrative measures aimed at rectifying any shortcomings are taken separately by the bodies concerned.

4.6. Assessment of companies and penalties

Work safety inspectors carry out regular assessments of company premises in Hungary. When they find any kind of offence against the Labour Protection Act, they impose a penalty. The sum accumulated from these fines will be distributed among those who successfully tender to implement work safety improvement measures.

In accordance with the present regulations, risk assessment entails a thorough survey of what may harm or endanger the workers, and what measures are necessary to prevent such outcomes. Although they are meant to be comprehensive assessments, they do not require complicated laboratory equipment, scientific apparatus or expensive services. In reality, risk assessment, in most cases, means nothing more than fulfilling the existing work safety requirements. The OMMF also penalise for insufficient investigations into work injuries.[21]

[21] http://www.eurofound.eu.int/ewco/2006/01/HU0601NU03.htm

Table No 1

Number and sum of fines imposed, 2003 and 2004

Penalty for:	Number of fines		% of previous year	Sum (HUF)		% of previous year
	2003	2004		2003	2004	
Infringement of legislation	5,636	5,309	94	54,727,500	56,197,000	102.7
Prevention failure	1,871	2,669	143	465,380,000	612,055,000	131.5
Inadequate measures	209	268	166	5,725,500	841,400,000	147
Total	7,716	8,246	107	525,833,000	676,666,000	128.7

Source: OMMF, 2004

4.7. Utilisation of the penalty income

The work safety committee is responsible to makes recommendations to the Minister of Social Affairs and Labour for the distribution of levied penalties. Following the minister's approval of the proposal, the OMMF signed contracts with the companies involved. Among the tenders were a number aimed at improving programmes for work safety training in small and medium-sized enterprises. These programmes have as their top priorities: a) briefing middle and senior management in relation to national work safety programmes, and b) widening the knowledge of and information available to work safety representatives.

5. Particular problems within the context of worker's compensation

5.1. Psychic risks

Psychic risks are not excluded by ascertaining the responsibility of the employer. Psycho-social affections are also included in the Catalogue of scheduled occupational diseases [Annex 2. of Decree No. 27/1996 (VIII. 28) of the Ministry of Welfare]. Otherwise, when determining non-financial compensation paid by the employer, the damage of the personality is also taken into account. However, it does not have deep and sophisticatedly elaborated roots in Hungarian judicial practice.

There is a particular issue of mental health at the workplace in Hungary. Relatively little reliable data is available on the national state of mental health, and

these show that the situation is extremely bad. Almost every second Hungarian worker is exposed to a high level of stress at the workplace. Another 40% suffer from medium level stress. A study performed by national occupational psychologists (Gordio group) showed that the working week of the average Hungarian consists of 44.5 hours worked, which is about 1 hour longer than the recommended 8 hours per day. Several groups of workers can work significantly longer. It is worth mentioning that doctors occasionally put in 60–70 hour weeks. Agricultural labourers work 12–14 hours a day April to September, 10 hours a day October to Mach; women employed in agriculture work 6–8 hours a day, and there are no days off (Saturday, Sunday, Official Holidays). About 60% of workers take on the extra time because they are expected to. Most find it hard to bear the stress of time, but the excessive workload and work tempo are also often a problem for Hungarian workers.

When asked about the cause of stress arising from human relationships, most respondents named the actions of their supervisors, and the lack of support from their supervisors. Financial difficulties lead the list of stress factors outside the workplace, but immediately after these, the general political and economic situation and mood of the country burden the psyche of the Hungarians.

General exhaustion and backache manifest themselves the most strongly of the physiological symptoms of stress, followed by high blood pressure (27%). Discontentment (dissatisfaction), reduced will to work, and anxiety top the list of psychic symptoms.[22]

5.2. Prevention of non-smoker employees

Smoking is still the number one public health hazard in Hungary. About 20,000 Hungarians die every year due to smoking, the country ranks first in the world for rates of lung cancer among both men and women and it is also first as far as lip cancer is concerned. About 40 percent of Hungarian men and 31 percent of Hungarian women still smoke regularly, which is very high even among Eastern European countries. Hungarians rank 8th in the world in per capita cigarette consumption, which is also very high. So it can be said that smoking is still in fashion in Hungary and there is no trend for this custom to be changed. Cigarettes are widely available, they are relatively cheap, unlike in Western European countries, and perhaps society is still more tolerant to smokers than it should be. This kind of availability of cigarettes, as well as the relatively weak regulation of smoking (see below), and the lack of political support for strong interventions to control tobacco are the main reasons why smoking continues to be the most important health hazard in Hungary.[23] There is a vivid problem, namely one does

[22] Dr. Richárd Plette Report of the "Issues of mental health in Hungary" workshop (http://mentalhealth.epha.org/pdf/Hungary%20report.pdf#search=%22psychic%20risk%20in%20Hungary%22)

[23] http://incentraleurope.radio.cz/ice/health/78171

not have to be a chain smoker to run the risk of becoming ill because of smoking (passive smoking). Its prevention is one of the main priorities of Western European countries and the EU, as the example of Ireland and Italy shows.

However, smoking regulations are in place in department stores, food markets, self-service and some other restaurants, canteens, and confectioners, as well as in schools, health establishments and on public transport. The 1993 Labour Safety Act specifies that specific smoking areas must be designated in all workplaces, or that other organisational measures must be in place in order to eliminate the harmful effects of second-hand smoke. Smoke-free areas in restaurants can be "separated" by using ventilation systems.

There are two Acts which contain provisions in connection with the prevention of non-smoker employees: Act XCIII of 1993 on Labour Safety and Act XLII of 1999 on the Protection of Non-Smokers and Certain Regulations on the Consumption and Distribution of Tobacco Products.

The Act XLII of 1999 states that with the exception of areas designated for smoking, the smoking is prohibited a) in confined areas, which are open to persons using the services of public institutions; b) on means of public transport; c) at events held in confined spaces and d) at places of work. The conditions for smoking at the work place and the designation of smoking areas for employees at the work place shall be governed by the instructions of different special legal regulations and by the employer.

Smoking areas may not be designated a) at the premises of medical institutions providing basic health services or outpatient care, or departments of medical institutions offering such services, and in the customer areas of pharmacies; b) in areas within public education institutions that are also used by students; c) in communal areas of social institutions offering care for children, with or without room and board, or child welfare, child protection and personal solicitude services that are open to the users thereof; d) on means of local public transport, local and suburban railways and on scheduled intercity buses and e) in the confined areas of sports facilities serving the performance of sport activities.

The sanctions. In the event that a natural person or legal entity or an unincorporated business association violates the restrictions or obligations contained in the Act with regard to smoking and the designation of smoking areas, such party shall be subject to a health care penalty. In the event of any violation of the smoking restriction at the place of work or of the obligation to designate a smoking area for employees, the legal consequences to be imposed on employees or employers are regulated by a separate Act. A health care penalty may only be imposed on natural persons who at the time of the act were over the age of 14 and who have an independent income. The amount of the health care penalty a) in the event of a breach of the prohibitions or restrictions with regard to smoking is a maximum of 30, 000 HUF, b) in the event of non-fulfillment or unsatisfactory fulfillment of the obligation regarding designation of smoking areas, or neglect of the supervisory obligation with regard to adherence of the prohibitions and restrictions concerning smoking and the distribution of tobacco products is a

minimum of 50, 000 HUF (approximately 80 per cent of the minimum wage) and a maximum of 100, 000 HUF (approximately 160 per cent of the minimum wage) in 2006.

Further steps are now being taken to strengthen tobacco control legislation. For example, the Government is aiming for all restaurants to be smoke-free by the year 2010. In December 2004, a public health directorate was established to co-ordinate the implementation of a ten-year public health programme that was adopted by the Parliament in June 2002.

5.3. Categories of workers in particularly hazardous work

a) Age (young persons)

According to the Labour Code Section 72 all persons entering into an employment relationship as employees must be at least sixteen years of age. Notwithstanding the minimum sixteen years of age, an employment relationship may be entered into by a person of at least fifteen years of age pursuing elementary school, vocational school or secondary school full-time studies during the school vacation period. Young persons under sixteen years of age may enter into an employment relationship only with the consent of their legal guardians. No deviation from the above-mentioned provisions is considered valid.

Young persons subject to compulsory full-time schooling may be employed for the purposes of performance in artistic, sports, modelling or advertising activities upon prior authorization by the competent authority. For the purposes of employment-related matters, employees under eighteen years of age are construed as young workers.[24]

b) Women

According to the Labour Code Section 75 women and young persons shall not be employed in work which may result in detrimental effects with a view to their physical condition or development. The particular jobs for which women or young persons may not be employed, or may only perform if specific working conditions are provided or on the basis of a preliminary medical examination, are determined by legal regulation.

According to the Labour Code Section 85 a woman, from the time her pregnancy is diagnosed until her child reaches one year of age, shall be temporarily reassigned to a position suitable for her condition from a medical standpoint, or the working conditions in her existing position shall be modified as appropriate, on the basis of a medical report pertaining to employment. The new position shall be designated upon the employee's approval.

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[24] Lehoczkyné Kollonay Csilla (szerk.): *A magyar munkajog II.* (Hungarian labour law II.). Kulturtrade Kiadó. Budapest, p. 80.

The wages of a woman temporarily reassigned to a different position or employed under modified work conditions without being transferred shall not be less than her previous average earnings. If the employer is unable to provide a position as appropriate for her medical condition, the woman shall be relieved from work and shall receive the wages payable for idle time for such period of time.[25]

c) Persons with reduced working capacity

Main instruments of integrating people with disabilities into the labour market In the beginning of the 1990s legislation that sought to improve conditions for disabled people gathered momentum. Several legal instruments of higher and lower level were adopted in order to reshape the system. In harmony with the Employment Act of 1991, the organisational conditions for the vocational rehabilitation of disabled people has been ensured by the central and local organs of the labour market organisation – which was set up to implement the mainstream employment policy objectives. These include rules that define the authority and work conditions of local and regional committees of rehabilitation that are responsible for rehabilitative employment and training. Professionally, the work of those organs was supervised by the Ministry of Social Affairs and Labour.

Main legislations relating to the persons with reduced working capacity.

1. Constitution of the Hungarian Republic (1949.): a) Right to choose own work and occupation; b) equal wages for equal work.

2. Act for Promoting Employment and Providing Unemployed People (1991.): Formulates clauses for the protection of „employees with reduced abilities to work". According to the act discrimination is not allowed between employees and unemployed workers according their sex, age, race, birth, religion, political conviction and their belonging to any trade union. This disposition does not exclude the positive discrimination of people with disadvantages on the labour market.

3. Common Decree of Ministry of Health and Ministry of Finance (1983.): Secure support for further employment of „employees with reduced abilities to work".

4. Labour Code (1992): Negative discrimination due to circumstances not related to work is prohibited. Possibilities for positive discriminations of disadvantages groups in equivalent circumstances are offered.

5. Decree of Ministry of Labour for Employment Promoting Subsidies (1996.): Establish Control Committees in the Labour Offices for examining the execution regarding the regulations of "employees with reduced abilities to work" and its safety Act for Employment (1997): Ministry of Work has the competence for the rehabilitation of „employees with reduced abilities to work".

[25] RADNAY JÓZSEF: *Munkajog.* (Labour law). Szent István Társulat, Budapest, 2003, p. 104.

6. Decree of Ministry of Labour (1998.): Regulation of the rehabilitation system for employment in the frame of the Labour Offices. Duty for employment of „employees with reduced abilities to work" for employers (above 20 employees / Quota Scheme).

7. New system for „employability criteria" Act for Providing Rights and Equal Opportunities for Disabled People (1998): Right to integration and normalization in all fields of life and for all needed support / assistance "The disabled person is entitled to integrated work...."

"The employer is obliged to transform the working environment to the needed degree, ..."

8. Decree of Ministry of Social and Family Affair's for Employment Promoting Subsidies (2000.): Possibility for financial assistance of alternative labour market services/programmes

Role of employers

According to the Common Decree of Ministry of Health and Ministry of Finance (1983) Secure support for further employment of „employees with reduced abilities to work" an employer is obliged to try to employ an employee with reduced working abilities in his/her original position in his/her original trade. In case that is impossible, the employer is obliged to ensure within his/her sphere of activity a position for the employee where he/she can use his/her working capacities without the further deterioration of his/her state of health. To that end the employer has to modify working conditions, retrain the employee, arrange vocational training, or to transfer the employee concerned to another workplace, one that corresponds to his/her age, qualifications and state of health. A person with reduced working abilities may also be employed in a separate section of the plant arranged for that purpose or, if the employee's work concerned makes that possible, he/she may take work home or work reduced hours. The costs of related measures shall be borne by the employer.

In order to help disabled people find or retain employment, the 1998 amendment of the act on employment obliges a wide spectrum of employers to employ persons with reduced working abilities. Before 1998 the obligation only referred to certain categories of business organisations and the sheltered work establishments. The legislation currently in force obliges all employers (including non-profit organisations and budget-financed institutions) to employ persons with reduced working abilities provided they employ more than 20 persons. The number of persons with reduced working abilities that has to be employed is 5% of the average statistical size of staff in the year concerned (as compared to 3% until 1998). For the purpose of establishing the size of staff, persons who do various categories of work for the benefit of the public with or without remuneration have to be left out. An employer who fails to observe his/her legal employment obligation must pay a rehabilitation contribution ("compensatory levy"). The annual sum of the rehabilitation contribution is the multiple of the difference

between the number of disabled people employed and the prescribed number on the one hand and the rehabilitation contribution on the other.

Role of the state

Sheltered and supported employment. Sheltered work establishments establishments are maintained by the local municipalities, and disabled persons and persons with reduced working abilities are usually employed for work carried on at home or out of the home. The sheltered work establishments are entitled to subsidies to help them employ people for the purpose of rehabilitation. The size of the subsidy is determined by legal instruments.

The role of alternative employment techniques has in recent years considerably grown in the field of rehabilitative employment, where the NGOs have acheived good results in creating opportunities for persons with reduced working abilities and disabled people to use their abilities.

Vocational training

Taking into consideration the skills and state of health of persons with reduced working abilities, training, or the insurance of vocational training, is the duty, in the first place, of the employer (at the time when the reduction of working abilities is established). The employer may apply for financial support. People with reduced working abilities and disabled persons may attend, in addition to mainstream training institutions large, rehabilitative and general-purpose training programmes run by the employment offices. The services offered by the labour market organisation are free of charge. The special institutions that are established in order to train or retrain disabled people offer their services by taking into consideration the conditions of the persons with disabilities. Such institutions have specially trained teaching staff who can carry out effective training. The NGOs play an important role in this field. However, the number of applicants who seek training at such institutions by far exceeds the number of places available.

Protection against dismissal

In cases defined by law, the employment of a person with reduced working abilities may not be terminated by ordinary notice. The ban on notice does not refer to that person with reduced working abilities who is employed by a firm that employs fewer than twenty persons. Other such cases are as follows:

a) such a person repeatedly fails to do his/her job properly or is incapable of doing his/her work, except when his/her unsatisfactory work performance or his/her inability derives from the reduction of his/her working abilities,

b) an employer ensures a new workplace for his/her employee of reduced working abilities (one that suits his/her state of health, age and qualifications) within his/her sphere of activity or in an identical workshop at another employer -

heeding the advice of the local committee of rehabilitation - or comes forward with a recommendation on training or attending a vocational training course or school but the persons with reduced working abilities does not accept the employer's initiative,

c) the person with reduced working abilities is entitled to old-age pension, disability pension, accident disability pension, old-age annuity or work disability benefit. Neither the employer, nor the committee of rehabilitation concerned can ensure a suitable workplace. In 1999: 20,000 employees worked in 58 sheltered workshops.

These statutory provisions protect both the persons with reduced working abilities and the employers. As for the latter, the law protects them from undue burdens that can derive from the employment of persons whose working abilities are low.

Employment service: advising and finding jobs

The Rehabilitation's Group of the Labour Offices carries out the professional assistance and co-ordination of the labour market services concerning unemployed with altered ability to work.

The Labour Offices:

a) explore why a person is restricted in finding a job

b) initiate medical examinations for employment

c) promote the employment of unemployed workers based on the suggestion of the rehabilitation's group

d) concerning the employers: give information, financial assistance, keep connection, follow them with attention

e) keep connection with organisations interested in employment of disabled people (people with altered ability to work)

Financial support

The rehabilitation contributions are collected in the rehabilitation component of the Labour Market Fund which is a separated fund of the state budget. That is the primary source for assisting the employment of disabled people. By granting assistance for employers according to certain criteria - and thus involving the open labour market in this process - it becomes possible to gradually build up a differentiated employment structure for people with disabilities. The rehabilitation component of the Labour Market Fund may be used to assist an employer who employs a person with a 40% reduction in his/her working abilities or whose ability to enter into employment or retain his/her job are reduced owing to his/her physical or mental impairment. Assistance may be granted to capital projects, retrofitting projects and the expansion of tangible assets, all of which promote the employment of persons with reduced working abilities provided that such projects:

a) generate a job for rehabilitative employment under normal operational conditions or

b) they aim to modernise, upgrade, expand or keep at a certain level such an existing job, or

c) aim to establish, upgrade, expand or keep at a certain level, a sheltered work establishment (as defined by a separate legal instrument) or

d) ensure the purchase, upgrading or modernisation of implements that facilitate the employment of persons with reduced working abilities.

Such support may be repayable, non-repayable or the two forms may be mixed. Non-repayable support may be given to enhance employment security, that is the retaining of a job, for an employer who is suffering from a temporary liquidity problem and who employs a person whose reduction of working abilities reaches 40% and is employed in part time and who (the employer), without such support, would be forced to close down that job.

Support may be given from the employment component of the Labour Market Fund to promote placement for an employer who intends to employ a person with reduced working abilities who is registered as unemployed. Support may be given in the form of wage supplement, support for work that serves the benefit of the public and/or paying in the employer's stead the social security contributions that are attached to that particular instance of employment.[26]

Recent policy debates on employment for people with disabilities

In 2000 the Hungarian Parlament agreed on the establishment of a National Disability Programme as a middle term action plan. It has following elements:

a) Consultation / guidance for choice / modification of profession

b) Elaboration of complex programmes for non-typical employment (distance / flexible work).

c) New definition of employers' duties in vocational rehabilitation

Development of supporting conditions / possiblities for vocational rehabilitation resp. employment

Definition of working abilities and on the needs of the labour market

e) Co-peration between state and NGO provided services. Financing system of NGOs' provided services.

d) Teleworking

According to the Labour Code Section 192/C the provisions of the Labour Code shall apply to the employment relationship of persons employed within the framework of teleworking subject to the exceptions set out in the separate chapter

[26] http://www.quip.at/natbg_intro.php3

No. X/A of the Labour Code. It means that all of the special provisions related to young, pregnant women, etc, are applied for teleworkers as well.

Furthermore, the provisions of LSA apply to teleworking subject to the exceptions set forth in these provisions. The workplace designated for teleworking must be approved by the employer in advance for occupational safety standards. The employee is authorized to make any changes of bearing for occupational safety purposes upon the employer's prior consent. Within the meaning of the Labor Code, an inspection conducted by the employer or his/her representative is considered justified if performed for the implementation of Paragraph *b)* of Subsection (7) of Section 54 of LSA.

Apart from the inspection, the employer or his/her representative are entitled to gain admission to the property where the work is performed for carrying out the duties and procedure related to occupational safety, such as the commissioning of equipment, assessment of risks, safety inspection and the investigation of accidents.

The employer informs the employee concerning the facilities available for consultation and representation of interests with respect to safety at work, and the names of persons placed in charge of these duties and information as to where they can be reached. The labour safety representative may enter the designated place of work upon the employee's consent.

The occupational safety and health board shall, prior to conducting an inspection, notify the employer and the employee at least three working days in advance. The employer shall obtain the employee's consent for admission into the designated work place for this purpose before the commencement of the inspection.

e) Hiring-out of workers

Regulatory framework

Act XVI of 2001 amended the Labour Code (Act XXII of 1992) in order to harmonise it with many EU Directives; among a number of major changes it included a new regulation on temporary agency work or hiring-out workers. Since then, a 2003 amendment of the Act on Labour Inspection has brought minor changes in the regulation of TAW, clarifying that the Hungarian Labour Inspectorate (Országos Munkabiztonsági és Munkaügyi Felügyelet, OMMF) is entitled to investigate both the agencies and the user companies to check on unlawful practices. Act XX of 2004 amended both the Labour Code and Act IV of 1991 on Employment Promotion and envisaged state subsidies for the re-employment of the unemployed through temporary work agencies, provided that the agencies opt for a special status, the so-called public benefit company.

Main provisions of the law

For the purposes of Labour Code 'hiring-out of workers' means when an employee is hired out by a temporary employment company or a placement agency to a user enterprise for work (hereinafter referred to as "placement"), provided there is an employment relationship between the worker and the temporary employment company or the placement agency.

"*Temporary employment company or placement agency*" means any employer who places an employee, with whom it has an employment relationship, under contract to a user enterprise for work and exercises the employer's rights and obligations jointly with the user enterprise (hereinafter referred to as "placement agency"). User enterprise" means any employer who employs a worker hired out by a placement agency and exercises the employer's rights and obligations jointly with the placement agency.

The 2001 legislation is based on the so-called triangle principle, i.e. the temporary work agency signs a contract with the employee on the basis of a special sort of employment relationship (it must be indicated in the contract that its purpose is to fulfil temporary agency assignments), while there is a commercial contract between the agency and the user enterprise on the assignment. During the period of this special employment relationship, the employer's rights and duties are shared between the agency and the user company. The employer's main functions, however, are fulfilled by the agency, such as hiring, termination of the employment relationship, paying the wage, informing the employee about working conditions and reporting to different authorities. At the same time, the user enterprise's regulations apply to work schedules (including working time, rest time and paid holidays) and to instructions on how the actual work is to be performed.

Temporary agency workers may be employed on both open-ended and fixed-term contracts, but a probation period is not allowed in either case. Furthermore, an earlier normal employment relationship may not be converted into a temporary employment contract. A few other stipulations of the law provide agency workers some security: the user enterprise cannot order them to work for another employer; rights of employees granted by the Labour Code or other legal regulations may not be restricted or denied; agreements not permitting the agency worker to enter into an employment contract with the user enterprise when the temporary employment contract expires – or requiring the worker to pay a certain fee to do so – must be considered null and void. At the same time, the law provides the employer with greater flexibility by suspending the stipulations of the Labour Code on termination of employment, successive fixed-term contracts, further training and some other issues. The statutory notice period for an open-ended temporary agency employment contract is 15 or 30 days depending on the length of service, while that of a fixed-term contract lasts up to the date of expiry.

As to taxes, agencies and their employees pay the same mandatory social security contributions as other employers/workers in ordinary employment contract.

Legal requirements for an Agency

Another novelty of the 2001 legislation is the compulsory registration/licensing of temporary work agencies, the details of which are regulated by a government decree (118/2001. [VI. 30.]). The application for registration is to be submitted to the competent labour centre – in practice to the regional office of the Public Employment Service (Állami Foglalkoztatási Szolgálat). Apart from professional requirements (at least one employee with the necessary competencies, appropriate permanent office), applicants must have a modest collateral (approximately EUR 4,000).

Basically, the use of temporary agency work is not limited by the law: they can be used in all sectors, provided the user enterprise has the necessary legal permission to perform the activity concerned. There are no special conditions of using temporary agency work, and renewing workers' assignments with the same user enterprise is not limited either.

As far as foreign-based agencies are concerned, the same restrictions apply as for other forms of posted workers. In practice, based on the reciprocity principle, Hungary does not limit taking up jobs by citizens of those EU Member States which pursue a similar policy towards Hungarian citizens. Following the EU enlargement in May 2004, the appearance of agencies from Slovakia is a new phenomenon in the Hungarian labour market in the border region.

Employment conditions

Although the law does not suspend the general equal pay principle for temporary agency workers, in practice neither the same wages nor the same conditions of employment are guaranteed as for comparable employees at the user enterprise. The only stipulation providing temporary workers with a certain degree of income security is that the agency is responsible for paying wages in the event that the user enterprise fails to pay the agreed fee in due time.

As the law does not stipulate explicitly that agency workers must be paid the same wages as employees in comparable jobs at the user enterprise, unsurprisingly case studies have found that agency workers earn 10%–20% less than permanent workers in the same jobs at the same workplaces, and the difference is even greater in terms of the non-wage elements of compensation. Agency workers' income and job security is further weakened by the common practice of agencies that they terminate the contract once there is no further assignment for the worker.

Since agencies and their employees pay the same taxes and statutory social security contributions as other employers/workers, mandatory benefits for which the agency workers are entitled are the same too. However, there is a difference in the contributions and rights to voluntary insurance policies (pension, health and accident), which are generally based on collective agreements or on the decision of the employer. Such policies at the user enterprise often do not cover agency

workers, and the agencies are not keen to provide their workers these benefits either.[27]

Particular provisions

Collective bargaining and collective agreements. As the company is the dominant level of collective bargaining in Hungary, the few sectoral agreements have no significant impacts on the wages and the working conditions of agency workers. Sectoral agreements are especially rare in those manufacturing branches where most of the temporary agency workers are used. As for company-level bargaining, case studies have found that there are practically no collective agreements at the agencies. Despite the legal regulation, which requires the user enterprise to inform trade unions on TAW assignments, collective agreements in user enterprises generally do not include any stipulations on agency work.

Protection of valnurable persons. According to the Labour Code Section 193/B the provisions of the Labour Code are apply to the employment relationship of persons employed within the framework of hiring-out workers subject to the exceptions set out in the separate chapter No. XI of the Labour Code. It means that all of the special provisions related to young, pregnant women, etc, are applied for hired-out workers as well.

According to the Labour Code Section 193/D sub-section (2) a) it is forbidden to employ a hired-out worker for any unlawful work, including hazardous work for young workers or pregnant women.[28]

5.4. The factory health care service

The factory health care service adapted to large enterprises prospering in the 1960s and 1970s had achieved significant results. Since the 80s, however, the curative activity of the service had prevailed and the preventive work had not met the expectations, which made professional renewal necessary. After the changes in the political, socio-economic regime – that occurred in Hungary in 1989–90 – the reorganisation of the factory health care became also necessary. This process has not been completed yet mainly because of the growing number of small and medium size enterprises. These are not able to manage their own factory health system.

In Hungary every employer must provide occupational health care service for all the employees in compliance with the Labour Safety Act and the sectorial decrees. One service (consisting of one physician and one nurse) may cover 1000-2000 workers depending on the health risks. Occupational health examination serving as basis of risk assessment makes 50 % of the work of the occupational health care service, while the other 50 % is made of the preemployment, periodic,

[27] http://www.eiro.eurofound.eu.int/2005/06/word/hu0506106t.doc

[28] RADNAY JÓZSEF: p. 235–236.

extraordinary and final fitness for work examinations. Employees without the fitness for work examination may not be employed in Hungary. The occupational health care service knows and maintains a good relationship with the management of the institution or enterprise served. The benefit of the project is the prevention of diseases and preservation of working ability. As a new requirement, judges have to undergo an aptitude test, regulated in a separate decree, in addition to the fitness for job examinations. For the evaluation of the suitability of judges' carrier, the presence of health, physical and psychical abilities, necessary to the judges' work must be examined. The aptitude test for judges consists of the general medical examination, including psychiatric examination and psychologic examination. The health promotion programme of the occupational health care service is an important tool to assist judges to cope with the aptitude test. At present, the courts of justice are undergoing a reorganisation process, the courts of appeal are planned to organise in addition to the present courts.[29]

5.5. IT technology and accident insurance

As automation, electronics and TQM systems are gaining ground, considerable changes can be observed in the world of labour as well – the proportion of mechanical injuries decreases while that of jobs demanding physical and adaptation efforts increases. The number of chemical, ergonomic and especially neural and psychic injuries and harms similarly increases.

In developed industrial countries tasks related with the working environment, with repeated, mental and psychic consequences, psychosocial and chemical risks associated with new technologies are in the foreground.

In developing countries the main attention is centred on the prevention and management of accidents and catastrophes in primary processing activities.

In Hungary these two approaches have to be taken simultaneously. In workplaces equipped with up-to-date technology, the elimination of stress and ergonomic burdens as well as the humanization of labour are of primary importance. However, in workplaces struggling with the lack of capital and professional skills, equipped with out-of-date technology, the main task is to perform traditional labour safety activities.

5.6. Lack of prevention and rehabilitation

Prevention and rehabilitation are both basically absent from Hungarian accident insurance. Functions of accident insurance character are distributed among various organizations, and there is no authentic information available about industrial

[29] http://www.enwhp.org/download/models/PubAdmin-Project/Hungary/WHP%20at%20the%20Heves%20County%20Court.pdf#search=%22psychic%20risk%20in%20Hungary%22

accidents and occupational diseases due to deficient data supply, the concealment of events and the insufficiency of data processing.

"Accident insurance" incorporated in health insurance does not include any risk-diminishing element, the extent of the contribution does not depend on the risk, it provides no incentive for prevention, the influencing and decreasing of needs have been pushed to the background.

On the one hand, the reimbursement practice based on the employer's liability (counterclaim or regress) does not cover the costs of the benefits, and on the other hand it provides disincentive for the employer to report accidents.

The above-listed also contribute to the fact that in spite of their considerable burden of social security character, the employers do not feel safe with respect to the employees' health.

The setting up of a system promoting risk-proportional burdens, the prevention of industrial accidents and occupational diseases, high-standard health care and the implementation of complex rehabilitation is an urgent requirement in Hungary – it is considered important by international labour organizations as well (ILO, 1992).

7. The latest comprehensive concept of the accident insurance system

At present there is no separate accident insurance scheme in Hungary. The setting up of an independent accident insurance system has been at issue since 1991, since starting the development of the current structure of the social security system. "Accident insurance benefits shall be registered separately within health insurance – temporarily, until the conditions of independent insurance are provided" – Parliament Resolution (OGY Határozat) 60/1991 stated about the concept of the renewal of the social security scheme. Work was carried out within the framework of the National Health Insurance Fund (OEP), with the participation of German and Finnish experts.

Later, Parliament Resolution (OGY Határozat) 20/2001 on the national program of labour safety set the primary aim of making employers directly interested economically in labour safety by means of setting up the separate insurance scheme of occupational diseases and industrial accidents, operated with a contribution system which is differential and is proportional to workplace risks. Government Decree No. 2084/2002. (III.25.) set forth the short-term tasks of setting up accident insurance.

According to the 2001-2002 concept, the accident insurance is a closed, self-regulating system, the operation of which results in a decreasing number of industrial accidents, in the better outcome of accidents and health injuries, in smaller burdens of insurance, and as a consequence of all these the amount of the contributions to be paid by the employer may decrease.

1. Prevention is a basic function serving the "business interests" of accident insurance. It is implemented through risk-proportional fees, the system of allowances – extra fees (bonus-malus) and various prevention services (financing

of occupational health care, operation of labour safety, quality assurance system, labour safety education, counselling, support for research, etc.).

2. High-standard medical treatment is realized through participation in the accreditation of health service providers and in their quality control as well as with case management.

3. Complex rehabilitation aims at helping the person with health injuries to participate in the life of society at the highest level possible, to perform work offering suitable promotion possibilities according to his/her aptitude, abilities and previous activities.

During the history of accident insurance the importance of rehabilitation benefits has been increasing, and in view of Hungary's problems concerning changed working capacity special attention has to be paid to the realization of the rehabilitation approach: handicapped persons and persons with changed working capacity have to be integrated into society at the highest level possible in the spirit of equality of chances and economic practicability.

Based on this, the principles of accident insurance to be set up can be expressed as follows:

1. Accident insurance is the insurance of all the employees in the employment sphere (including the self-employed and the employees in the public sphere) with compulsory participation, but voluntary participation is also possible for persons not under the scope of the act.

2. The principles of insurance prevail generally in the accident insurance scheme, the principles of solidarity in the benefits and the principles of risk-proportionality in bearing the burdens.

3. The insurance legal relationship, simultaneously with the employment legal relationship serving as its base, is formed by the force of law. The employer (and the person joining the insurance voluntarily) is under the obligation to report, to register, to supply data and to pay contributions.

4. Only the employer is obliged to pay accident insurance contribution. The risk involved in the employer's activity and the liability defined in the Labour Code and also in the Labour Safety Act is expressed primarily in the contribution.

5. The insured persons' eligibility for benefits in kind and in cash is based on the regular payment of accident insurance contributions.

6. The insured person is entitled to health and medical rehabilitation services in connection with work, industrial and occupational diseases with the same content, if necessary.

7. Health care services can be used in the framework of accident insurance only to the extent justified by the degree of health injury due to an industrial accident or occupational disease.

8. The accident insurer contributes to prevention among others by providing labour safety and labour health (hereafter labour safety) information and counselling, by financing examinations and research.

The system is self-financing (the contributions have to be adjusted in a flexible manner to cover prevailing costs) but the declaration of state guarantee is necessary.

However, the independent, new accident insurance branch of social security scheme is still waiting for realization. It is also important to note that unlike in some other countries there hasn't been revealed to establish private accident insurance system in Hungary.

JÓZSEF HAJDÚ

A MAGYAR BALESETI ELLÁTÁSOK RENDSZERE

(Összefoglaló)

A tanulmány első részében bemutatásra kerül a magyar balesetbiztosítás kialakulása és történeti fejlődése. A történeti áttekintés során elsősorban a jogi szabályozás fejlődésére és a folyamatosan megjelenő jogszabályok bemutatására törekedtünk.

A munka második részét képezi a társadalombiztosítás keretében szabályozott baleseti ellátásokra vonatkozó hatályos magyar jogszabályok bemutatása. A magyar munkavédelemre vonatkozó jogi szabályozás értelmében a baleset az emberi szervezetet ért olyan egyszeri külső behatás, amely a sérült akaratától függetlenül, hirtelen vagy rövid időn belül következik be, és sérülést, mérgezést vagy más testi- lelki egészségkárosodást, halált okoz. A társadalombiztosítási ellátások körében a baleseti ellátásokra jogosító eseményeket ennél szűkebb értelemben, a munkavégzéssel összefüggésben bekövetkezett balesetekből eredő ellátási igényekre alkalmazzuk. A munkavédelmi előírások betartásával, betartatásával a munkáltatók kötelesek olyan munkavégzésre alkalmas körülményeket teremteni, ahol a munkavállalók élete, testi épsége és egészsége nincs veszélynek kitéve. Abban az esetben, ha ennek ellenére a munkavállaló a munkavégzésével összefüggésben egészségkárosodást szenved, a társadalombiztosítási rendszer keretében baleseti ellátásokat vehet igénybe. Az üzemi balesetből vagy foglalkozási megbetegedésből eredő egészségkárosodásokra nyújtott baleseti ellátásokra speciális, az általános szabályoknál kedvezőbb szabályok vonatkoznak, így szélesebb körű gondoskodás igénybevételére vagy magasabb összegű ellátásra biztosítanak lehetőséget.

A baleseti ellátások szabályozása a magyar társadalombiztosítási rendszerben két törvényben történik. Egyrészt a kötelező egészségbiztosítás ellátásairól rendelkező törvény megkülönböztet a) természetbeni ellátásokat (baleseti egészségügyi szolgáltatások), illetve b) pénzbeli ellátásokat. A pénzbeli ellátásokon

belül további két fajta ellátás igényelhető: ba) a balesetből eredő keresőképtelenség idejére baleseti táppénz és bb) a balesetből eredő munkaképesség-csökkenés esetére baleseti járadék, feltéve, ha a munkaképesség-csökkenés mértéke nem haladja meg 66 százalékot.

Másrészt a társadalombiztosítási nyugellátásokról rendelkező törvény tartalmazza a baleseti rokkantsági nyugdíjra vonatkozó szabályokat. Baleseti rokkantsági nyugdíjra az jogosult, aki munkaképességét 67 százalékban túlnyomóan üzemi baleset következtében vesztette el és rendszeresen nem dolgozik, vagy keresete lényegesen kevesebb a megrokkanás előtti kereseténél.

Munkánk harmadik részében részletesen foglalkoztunk a munkáltató balesetért fennálló munkajogi felelősségével, ami rendkívül szoros jogi kapcsolatban van a társadalombiztosítási baleseti ellátásokkal.

A következő nagyobb részben részletesen bemutatásra került a munkaügyi ellenőrzés rendszere.

Ezt követően a baleseti ellátásokkal szembeni néhány régi/új kihívással foglalkoztunk röviden. Ide soroltuk a fiatal munkavállalók, nők és terhes anyák, megváltozott munkavégzőképességű személyek fokozott munkajogi védelmét, nemdohányzók védelmét, valamint a távmunkát végző személyekre, illetve a munkaerő-kölcsönzés keretében foglalkoztatott munkavállalókra vonatkozó speciális szabályok ismertetését.

A munka utolsó részében röviden bemutattuk, hogy az elmúlt egy évtizedben milyen – a baleseti ellátások rendszerét szervesen érintő – reform-elképzelések láttak napvilágot Magyarországon.

A SZEGEDI TUDOMÁNYEGYETEM ÁLLAM- ÉS JOGTUDOMÁNYI KARÁNAK E SOROZATBAN ÚJABBAN MEGJELENT KIADVÁNYAI

Tomus LXVII.

Fasc. 1. *Antal* Tamás: A debreceni népképviseleti közgyűlés (1848–1867). Az 1848: XXIII. tc. végrehajtása Debrecenben (Szeged, 2005) 80 p.

Fasc. 2. *Bezdán* Anikó: A jogi személyiségű halászati szervezetek minősítésének jogi alapkérdései (Szeged, 2005) 28 p.

Fasc. 3. *Bobvos* Pál: A mezőgazdasági termékértékesítési szerződés (Szeged, 2005) 23 p.

Fasc. 4. *Borsodi* Zoltán: A magyar szövetkezeti érdekvédelmi szervek történelmi keresztmetszete (Szeged, 2005) 62 p.

Fasc. 5. *Fantoly* Zsanett: A vállalkozás vezetőinek felelőssége a német és a francia büntetőjogban (Szeged, 2005) 23 p.

Fasc. 6. *Farkas* Csaba – *Kasza* Péter Ferenc: A közbeszerzés hazai szabályozásának fejlődése (Szeged, 2005) 29 p.

Fasc. 7. *Farkas Csamangó* Erika: A géntechnológia agrárjogi aspektusai (Szeged, 2005) 22 p.

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Fasc. 10. *Heka* László: Vallási és politikai konfliktusok a délszláv térségben. Kanun i Lekë Dukagjinit (Az albán szokásjog). (Szeged, 2005) 59 p.

Fasc. 11. Szilvia *Horváth*: Emissionhandel in der Europäischen Union (Szeged, 2005) 46 p.

Fasc. 12. *Kiss* Barnabás: Az egyenlő bánásmód követelménye az Alkotmánybíróság gyakorlatában (Szeged, 2005) 17 p.

Fasc. 13. *Mezei* Péter: A fair use doktrína az amerikai szerzői jogban (Szeged, 2005) 50 p.

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Fasc. 15. *Nagy* Tamás: Jog és irodalom: az előkérdések tárgyalása (Szeged, 2005) 42 p.

Fasc. 16. Tamás *Nótári* – Tekla *Papp*: Die Problematik des gemeinsamen Todes im Lichte der Geschichtlichkeit und der neuen ungarischen BGB-Konzeption (Szeged, 2005) 23 p.

Fasc. 17. Béla *Révész*: Documents on the dictatorship and the cold war in the Hungarian archives – the case of RFE (Szeged, 2005) 96 p.

Fasc. 18. *Schiffner* Imola: A nemzetközi világrend változásai, avagy a vesztfáliai békétől az ENSZ Alapokmányáig (Szeged, 2005) 32 p.

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Fasc. 20. *Szomora* Zsolt: Az erőszakos szexuális bűncselekmények az osztrák büntetőjogban (Szeged, 2005) 29 p.

Fasc. 21. *Szondi* Ildikó: A Délvidék nemzetiségi demográfiai adatai, különös tekintettel a magyarság adataira (Szeged, 2005) 27 p.

Tomus LXVIII.

Fasc. 1. *Antal* Tamás: Régiók Magyarországon egykor és most (Két adalék). (Szeged, 2006) 45 p.
Fasc. 2. *Bató* Szilvia: A büntetésekre vonatkozó elvek Kossuth Lajos Pesti Hírlapjában (1841–1844). (Szeged, 2006) 21 p.
Fasc. 3. *Bezdán* Anikó: Két agrárszervezet törvényes felügyeletének speciális vonásai (Szeged, 2006) 22 p.
Fasc. 4. *Bobvos* Pál: A szövetkezeti üzletrész stációi és feladása (Szeged, 2006) 22 p.
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Fasc. 11. *Horváth* Szilvia: A kibocsátási jogok kereskedelme és a közösségi alapjogok kapcsolata (Szeged, 2006) 32 p.
Fasc. 12. *Juhász* Zsuzsanna: A megújult Európai Börtönszabályok ismertetése (Szeged, 2006) 28 p.
Fasc. 13. *Károlyi* Judit: Az állatkínzás szabályozásának fejlődése Magyarországon (Szeged, 2006) 25 p.
Fasc. 14. Thomas *Mann* – Heide *Wedemeyer* – Zoltán *Józsa*: Noise Pollution Regulation in Germany and Hungary (Szeged, 2006) 30 p.
Fasc. 15. *Mezei* Péter: Szabad felhasználás az osztrák jogrendszerben (Szeged, 2006) 53 p.
Fasc. 16. *Miklós* László: A tartós környezeti kár szabályozása és gyakorlata (Szeged, 2006) 27 p.
Fasc. 17. *Nagy* Ferenc: Az ellenség-büntetőjogról, a jogállami büntetőjog eróziójáról (Szeged, 2006) 21 p.
Fasc. 18. *Nagy* Zsolt: Jogásztársadalom a globalizáció tükrében (Szeged, 2006) 33 p.
Fasc. 19. *Révész* Béla: A „Duna-gate" ügy jelentősége a rendszerváltás történelmében (Politológiai értelmezési lehetőségek). (Szeged, 2006) 131 p.
Fasc. 20. *Schiffner* Imola: Államok szövetségei a nemzetközi jogban (Szeged, 2006) 28 p.
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Fasc. 24. *Szondi* Ildikó: A jugoszláviai háború áldozatai a demográfiai adatok tükrében (Szeged, 2006) 18 p.
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